



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.08.2021

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
AND

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P. (MD) .No.16274 of 2020

and

W.M.P. (MD) .No.13603 of 2020

K.Pushpavanam (M 23/2020),
S/o. I.Kasi Viswanathan,
2/49 A, North Street,
Athalai Village, Pothumbu Post,
Madurai 625 018.

... Petitioner

Vs

1.The Union of India,
Represented by the Principal Secretary,
Ministry of Law and Justice,
Union of India,
4th Floor, A-Wing, Shastri Bhawan,
New Delhi 110001.

2.The Member Secretary,
Law Commission of India,
2nd and 4th Floor, B Wing,
Lok Nayak Bhawan, Khan Market,
New Delhi 110003

3.The Secretary,
Implementation Cell, Department of Legal Affairs,
Ministry of Law and Justice,
A Wing, 4th Floor, Shastri Bhawan,
New Delhi 110001

4.Union of India,
Represented by its Secretary,
Ministry of Parliamentary Affairs,
New Delhi.

5.The State of Tamil Nadu,
Represented by its Chief Secretary,
Secretariat, Chennai.



6.The Secretary to Government,
Government of Tamil Nadu,
Law Department,
Secretariat, Chennai.

... Respondents

(R4 to R6 are suo motu impleaded vide order dated
01.12.2020 in W.P. (MD).No.16274 of 2020)

PRAYER: Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus, directing the respondents to propose a comprehensive legislation in the field of "Torts and State Liability" as per the directions of Hon'ble Supreme Court of India in **"MCD V. Uphaar Tragedy Victims Assn (2011) 14 SCC 481"** and **"Vadodara Municipal Corporation V. Purshotam V. Murjani and others (2014) 16 SCC 14"** in accordance with law within the time stipulated by this Court.

For Petitioner : Mr.R.Alagumani

For Respondents : Ms.Victoria Gowri
Assistant Solicitor General (for R1 to R4)

Mr.M.Muthugeethaiyan
Special Government Pleader (for R5 to R6)

O R D E R

(Order of the court was made by MR.N.KIRUBAKARAN.J.,)

"What is the use of constitutional Courts in passing judgments, giving recommendations for enacting laws, when they are not actually acted upon by legislature?"

"What is the use of having a Law Commission without its recommendation being acted upon?"

"BLACKSTONIAN" principle is being followed in our country by which the role of judiciary is to propound and interpret the law and not to legislate the law. Though the separation of powers between judiciary, executive and legislature has not been specifically spelt out in constitution of India, the same is maintained without crossing their respective boundaries. However, the way in which things are moving, it is very difficult to maintain the limits or the boundaries as legislature fails consistently to take notice of many of Courts' suggestions, which have been in the interest of the society to enact laws. It is still worse with regard to acceptance of recommendations of Law Commission which after getting inputs, from various stakeholders and discussions on various issues, made to the Government to enact law, which are neither accepted nor acted upon whereas they are kept it in cold storage for decades together.

2.One such recommendation was made by the first Law Commission as early as in 1956. When the first Law Commission submitted its



reports, Report No.1 titled "Liability of the State in Tort" and recommended to the Central Government to enact the law covering the field of liability of State in Tort, the said recommendation has not been enacted as law, inspite of the judgments of the Hon'ble Supreme Court. In the case of **Municipal Corporation of Delhi, Delhi Vs. Uphaar Tragedy Victims Association and others** reported in **2011 (14) SCC 481** in paragraph 109, the Hon'ble Supreme Court pointed out about the lack of legislation, regarding tortious claims against States and need for a comprehensive legislation in dealing with the tortious liability of the States and its instrumentalities and hoped and trusted that utmost attention would be given by the legislature for bringing in appropriate legislation to deal with claims in public law for violation of fundamental rights therein to its citizens at the hands of the State and its officials. Subsequently in **Vadodara Municipal Corporation V. Purshottam V. Murjani and others** reported in **(2014) 16 SCC 14** again the Hon'ble Supreme Court reiterated the necessity for a comprehensive legislation dealing with the tortious liability of the State and its instrumentalities and referred the matter to Law Commission for further necessary action. In spite of the recommendations made by the Hon'ble Supreme Court about a decade ago in 2011 and thereafter in 2014, the Government has not taken the recommendations positively and enacted a comprehensive legislation.

3. In the above circumstances only, the Petitioner has come before this Court seeking Writ of Mandamus, directing the respondents to propose a comprehensive legislation in the field of "Torts and State Liability" as per the directions of Hon'ble Supreme Court of India in **"MCD V. Uphaar Tragedy Victims Assn** reported in **(2011) 14 SCC 481"** and **"Vadodara Municipal Corporation V. Purshottam V. Murjani and others** reported in **(2014) 16 SCC 14"** in .

4. When the matter came up for admission before this Court on 01.12.2020, the following interim order has been passed, raising about 7 queries to be answered by the respondents:

"There cannot be any Mandamus to Parliament or Legislature to enact a law or to make amendment of a statute",

is the settled position of law. It is based on the principle enunciated in the Constitution that there should be a separation of powers between the three wings of the State, namely, Executive, Legislature and Judiciary. However, the response shown by the other Wings to the suggestions made by judiciary regarding the important issues for enactment of suitable laws pointing out the absence of law as on date or the necessity to make new laws or to amend the existing Acts, is not positive and the suggestions made by the constitutional Courts are not considered by the legislatures very seriously and acted upon.

<https://hcservices.ecourts.gov.in/hcservices> The history would tell that the suggestions given by the



Honourable Supreme Court and various High Courts have been consistently ignored by the respective Governments. It seems that the orders giving suggestions to the respective Governments, either are not properly considered or not properly brought to the notice of the policy makers, so that, the decision could be taken for enactment of law as pointed out by the Courts. It seems that there is no proper Wing in every Department of the Government to note the suggestions/directions given by the Courts and bring them to the notice of the policy makers. Therefore, there is a necessity to have such a Wing in every Department.

3. For example, the Honourable Supreme Court in **V.Sudeer v. Bar Council of India** reported in **AIR 1999 SC 1167**, struck down the Bar Council of India Training Rules, 1995, as amended by the Resolution of the Bar Council of India, dated 19.07.1978, to give training to the entrants of the legal profession as ultra vires as the Bar Council of India does not have the rule making power under the Advocates Act, 1961 and only the Parliament alone can amend the Advocates Act, 1961. However, in the judgment dated 12.03.1999, the Honourable Supreme Court insisted upon the necessity to bring an amendment to the Advocates Act, 1961 by the Central Government to re-enact the provision for training of the law graduates or its necessity for the professionals to control the deterioration of the standards of the legal profession. It is relevant to extract hereunder the following paragraphs of the above judgment:

"Unfortunately the same was omitted later on in the Act by amendment and this has been the second major factor responsible for the deterioration of standards in the legal profession. Now that the Bar Council of India is wanting the reintroduction of Section 28(2)

(b) by Parliament for training the Law Graduates for a period and for conducting the Bar Council Examination, the Central Government must soon re-enact the provision. But the new section must say that the method of training and the Examination must be such as may be prescribed by the Chief Justice of India after considering the views of the Bar Council of India. As this matter pertains to entry into the legal profession for practice in Courts, the final authority in this behalf must be with the Chief Justice of India but after obtaining the views of the Bar Council of India.

.....

.... In these circumstances, appropriate statutory power has to be entrusted to the Bar Council of India so that it can monitor the enrolment exercise undertaken by the State Bar Council concerned in a uniform manner. It is possible to visualise that if

power to prescribe pre-enrolment training and examination



is conferred only on the State Bar Councils, then it may happen that one State Bar Council may impose such pre-enrolment training while another Bar Council may not and then it would be easy for the prospective professional who has got requisite law degree to get enrolment as the advocate from the State Bar Council which has not imposed such pre-enrolment

training and having got the enrolment he may start practice in any other Court in India being legally entitled to practise as per the Act. To avoid such an incongruous situation which may result in legal evasion of the laudable concept of pre-enrolment training, it is absolutely necessary to entrust the Bar Council of India with appropriate statutory power to enable it to prescribe and provide for all India basis pre-enrolment training of advocates as well as requisite apprenticeship to make them efficient and well informed officers of the Court so as to achieve better administration of justice. We, therefore, strongly recommend appropriate amendments to be made in the Act in this connection."

4. Though the Honourable Supreme Court struck down the Apprenticeship Rule, it opined that it was introduced only to enhance the quality of the legal profession and the legal training is necessary and the Parliament should make an amendment in the Advocates Act, 1961.
5. Though the said judgment was passed on 12.03.1999 and a copy of which was directed to be marked to the Chairman, Law Commission of India, the Secretary to Government, Ministry of Law and Justice, Government of India, for appropriate action, till date, even after passing of two decades, namely, 21 years, the Government is not bothered to bring an amendment to the Advocates Act, 1961, to have apprenticeship.
6. When the Honourable Supreme Court felt in the said judgment that the necessity to have Apprenticeship, namely, training for the law graduates before enrolment, for lack of power on the part of the Bar Council of India, the Honourable Supreme Court technically struck down the resolution. The Honourable Supreme Court though found that there was a lack of power on the part of the Bar Council of India, it could have given a direction validating the Apprenticeship Rules under Article 142 of the Constitution of India. However, it refrained from exercising the power under Article 142 of the Constitution of India with a fond hope that the Parliament would bring the necessary amendment in the Advocates Act, 1961. The expectation of the Honourable Supreme Court has not been fulfilled.



7. Similarly, the Honourable Supreme Court has given a judgment in **Vishaka and others v. State of Rajasthan reported in AIR 1997 SC 3011**, to enact a law to prevent sexual harassment to women at work place and the relevant portion of the judgment reads as under:

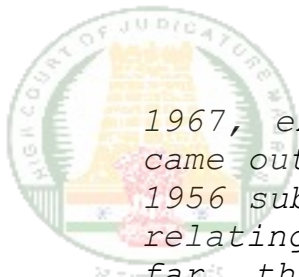
"In view of the above, and the absence of enacted law to provide for the effective enforcement of the basic human right of gender equality and guarantee against sexual harassment and abuse, more particularly against sexual harassment at work places, **we lay down the guidelines and norms specified hereinafter for due observance at all work places or other institutions, until a legislation is enacted for the purpose.** This is done in exercise of the power available under Article 32 of the Constitution for enforcement of the fundamental rights and it is further emphasised that this would be treated as the law declared by this Court under Article 141 of the Constitution."

8. Even though the said judgment came to be passed in the year 1997, only after 14 or 15 years only, the Parliament passed the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

9. The above examples would also prove that either the Parliament or the State Legislature is not taking up the suggestions/directions of the Constitutional Courts seriously. Similarly, more number of cases/decisions could be quoted, wherein the Constitutional Courts have suggested for bringing the new Act or to bring suitable amendments in the various existing Acts and till date, they have not been done.

10. One such case pointing out defaulting of the Central Government to enact a law as suggested by the Hon'ble Apex Court, has come before this Court seeking a writ of Mandamus directing the respondents to propose a comprehensive legislation in the field of 'Torts and State Liability' as per the directions of the Honourable Supreme Court in **MCD v. Uphaar Tragedy Victims Association** reported in (2011) 14 Supreme Court Cases 481 and **Vadodara Municipal Corporation v. Purshottam V. Murjani and others** reported in (2014) 16 Supreme Court Cases 14, in accordance with law within the time stipulated by this Court.

11. It is pointed out that there is no legislation in the field of 'Torts and State Liability' in India. Though the recommendations have been made by the Law Commission to the Union Government for a comprehensive legislation in the field of 'Torts and State Liability' as early as in the year 1965-



1967, except introduction of some Bill in 1965-1967, nothing came out as an Act. The Law Commission as early as in the year 1956 submitted its report insisting upon to have a legislation relating to State Liability. So

far, the legislation is yet to come. The Honourable Supreme Court time and again has been insisting upon the necessity to have a comprehensive legislation in the above subjects.

12. In **MCD v. Uphaar Tragedy Victims Association** reported in (2011) 14 Supreme Court Cases 481 and **Vadodara Municipal Corporation v. Purshottam V. Murjani and others** reported in (2014) 16 Supreme Court Cases 14, the Honourable Supreme Court reiterated the need for a comprehensive legislation in the field of 'Torts and State Liability'. Paragraph 17 of the judgment in **Vadodara Municipal Corporation v. Purshottam V. Murjani and others** (cited supra), reads as follows:

"17. We do not find any ground to exonerate the Corporation. Admittedly, the activity in question was covered by the statutory duty of the Corporation under Sections 62, 63 and 66 of the Bombay Provincial Municipal Corporation Act, 1949. Mere appointment of a contractor or employee did not absolve the Corporation of its liability to supervise the boating activities particularly when there are express stipulations in the contract entered into with the contractor. The Corporation was not only discharging its statutory duties but also was acting as service provider to the passengers through its agent. The Corporation had a duty of care, when activity of plying boat is inherently dangerous and there is clear foreseeability of such occurrence unless precautions are taken like providing life saving jackets."

13. Moreover, it is pointed out that the tenure of Chairman of the 21st Law Commission already came to an end and 22nd Law Commission of India was constituted by Notification, dated 21.02.2020. However, so far the Chairman and Members have not been appointed. The non-appointment of the Chairman and Members of the Law Commission of India which is like an Advisory Board, for a long time, will affect the progress of the law making process in the country.

14. In view of the above, this Court, suo motu, impleads,
(i) Union of India, represented by its Secretary, Ministry of Parliamentary Affairs, New Delhi;
(ii) The State of Tamil Nadu, represented by its Chief Secretary, Secretariat, Chennai; and
(iii) The Secretary to Government, Government of Tamil Nadu, Law Department, Secretariat, Chennai, as the respondents 4 to



6. Registry is directed to carry out necessary amendments in the cause title.

15. Mrs. Victoria Gowri, learned Assistant Solicitor General of India takes notice on behalf of the newly impleaded fourth respondent and Mr. M. Muthugeethaiyan, learned Special Government Pleader takes notice for the newly impleaded respondents 5 and 6.

16. Considering the facts and circumstances of the case, the following queries are raised:

(a) In how many judgments, the Constitutional Courts have recommended for enactment of new laws or amendments of the existing Acts, so far?

(b) How many orders have been acted upon and suitable Acts/Rules and amendments to the existing Acts, have been done so far and what are all the new Acts/Rules and the amendments made so far?

(c) How many judgments are being acted upon and suitable Acts/Amendments are in the process of enactment?

(d) When will the Parliament will bring a comprehensive suitable legislation in the field of 'Torts and State Liability' for violation of fundamental rights of the citizens at the hands of the State and its officials?

(e) Whether the Central and State Governments are having appropriate Wings to note down the judgments/orders of the Constitutional Courts, wherein suggestions for enacting new Acts or amendments have been enacted/proposed or recommended?

(f) If there is no such Wing, when such Wing will be established to bring those suggestions to the higher-ups or policy makers to act upon suggestions given by Courts?

(g) When does the Central Government appoint Chairman and Members of 22nd Law Commission of India?

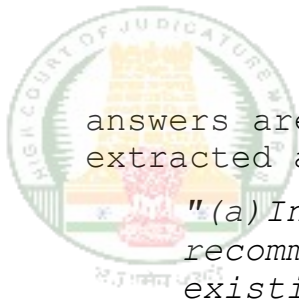
17. The above queries shall be answered by the respondents in the next date of hearing.

18. List the matter on **10.12.2020** in the motion list."

The aforesaid interim order would comprehensively cover the contention of the Petitioner and the queries raised by this Court would cover the general issues viz., whether respective governments take note of the suggestions made by constitutional Courts and whether the suggestions are being acted upon and whether there is any mechanism available to note down the suggestions and forward them to the policy makers etc.,

4. An affidavit has been filed by respondents 1 to 3 and the

<https://hcservices.ecourts.gov.in/hcservices/>



answers are given in paragraph 4 of the affidavit which are usefully extracted as follows:

"(a) In how many judgments, the Constitutional Courts have recommended for enactment of new laws or amendments of the existing Acts, so far?

(b) How many orders have been acted upon and suitable Acts/Rules and amendments to the existing Acts, have been done so far and what are all the new Acts/Rules and the amendments made so far?

(c) How many judgments are being acted upon and suitable Acts/Amendments are in the process of enactment?

It is most humbly submitted that, such information is not available with the Respondents. However, the 21st Law Commission on reference from the Hon'ble Supreme Court and High Courts examined and submitted reports to the Government i.e., Report No.263, 2664, 265, 266, 267, 272, 275, 276 & 277. All the reports are available on the website of Law Commissioner of India, i.e., lawcommissionofindia@nic.in. A list of the same is attached herewith as Annexure-A.

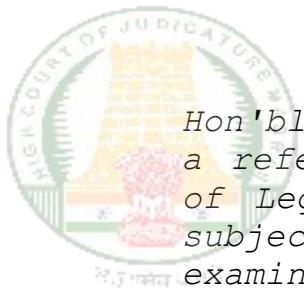
(d) When will the Parliament will bring a comprehensive suitable legislation in the field of 'Torts and State Liability' for violation of fundamental rights of the citizens at the hands of the State and its officials?

It is most humbly submitted that, it is for the concerned Departments/Ministries which has to take a view in consultation with the Government. Further, the instant subject matter is the concern of Legislative Department of Govt. of India which upon consultation has informed that no such proposal on the subject matter is under consideration. A copy of the same is attached herewith as Annexure-B.

(e) Whether the Central and State Governments are having appropriate Wings to note down the judgments/orders of the Constitutional Courts, wherein suggestions for enacting new Acts or amendments have been enacted/proposed or recommended?

(f) If there is no such Wing, when such Wing will be established to bring those suggestions to the higher-ups or policy makers to act upon suggestions given by Courts?

It is most humbly submitted that, with respect to (e) and (f), all the concerned Ministries of the Government are to note down the judgment/orders of the Constitutional Courts, wherein suggestions for enacting new Acts or Amendments have been proposed or recommended by the



Hon'ble Courts. Thereafter, the Ministry concerned makes a reference to the Law Commission through the department of Legal Affairs for a comprehensive examination of the subject. It is the mandate of the Law Commission to examine the subjects referred to it by the Central Government. In this direction, various Law Commissions, so far have submitted 277 reports to the Government.

(g)When does the Central Government appoint Chairman and Members of 22nd Law Commission of India?"

Ans:It is most humbly submitted that, the 22nd Law Commission has been constituted vide Notification dated 21.02.2020 and the matter of appointment of Hon'ble Chairman and Members is under consideration of the Government."

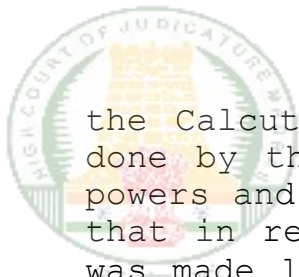
5.Heard Mr.R.Alagumani, learned counsel appearing on behalf of the petitioner. Mrs.Victoria Gowri, learned Assistant Solicitor General appearing on behalf of R1 to R4 and Mr.M.Muthu Geethaiyan, learned Special Government Pleader appearing on behalf of R5 and R6.

6.In the past, the first judicial decision was given with regard to the State's liability during East India Company period in John Stuart's case in the year 1775 in which it was held that for the first time the Governor General in Council had no immunity from the Court's jurisdiction in the cases regarding dismissal of Government servants. The British Crown assumed the sovereign powers in 1858 by virtue of enactment known as Government of India Act 1858. The said Act was replaced by Government of India Act 1915 and 1935. Section 58 of Government of India Act 1858 recognised the tortious liability of the State and by which the Secretary of State may sue or be sued. Section 58 of the said Act is extracted as follows:

"All Persons who at the Time of the Commencement of this Act shall hold any Offices, Employments, or Commissions whatever under the said Company in India shall thenceforth be deemed to hold such Offices, Employments and Commissions under Her Majesty as if they had been appointed under this Act, and shall be paid out of the Revenues of India; and the Transfer of any Persons to the Service of Her Majesty shall be deemed to be a Continuance of his previous Service and shall not prejudice any Claims to Pension, or any Claims on the various annuity Funds of the several Presidencies in India, which he might have had if this Act had not been passed."

In the case of **Oriental Steam Navigation Vs. Secretary to the State of India (Bombay High Court Reports Vol.V, 1868-69)**, it was held by

<https://hcservices.ecourts.gov.in/hcservices/>



the Calcutta High Court that there was a distinction between acts done by the public servant in the delegated exercise of sovereign powers and acts done by them in the conduct of other activities and that in respect of non-sovereign functions, the Secretary of State was made liable. This Court in **Secretary of State Vs. Hari Bhanji** reported in **(1882) ILR Madras 273** held that the immunity of East India Company could be applicable only to "Acts of the State". In the said case, during the course of transit of salt from Bombay to Madras Port, the rate of duty of salt was increased and the merchant was asked to pay the difference in the duty at Madras port." The merchant filed the suit for recovery after paying the amount under protest and this Court held that the Government was not liable as it was discharging sovereign functions. In another case, viz., **Secretary of State Vs. Cockraft** reported in **1914 SCC OnLine Mad 637**, this Court held that suit for damages, for not maintaining Military road, wherein the plaintiff got injured by the negligent leaving of heap of gravel maintained by the PWD, while he was walking, was not maintainable as maintenance of Military road was one of the sovereign functions of the Government. The above cases would indicate that in case of non-sovereign functions of the State or its servants, suit for damages was held to be maintainable and in respect of sovereign functions, suit was not maintainable.

7. After Independence, the Constitution of India came into force in 1950 in which **Article 294** and **Article 300** have been incorporated under **Chapter III Part XII** of the Constitution of India as "**Property Contracts, Rights, Liabilities, Obligations and Suit**" which contain explicit and implicit provisions with regard to tortious liability of the State. Articles 294 and 300 are extracted as follows:

"294. Succession to property, assets, rights, liabilities and obligations in certain cases s from the commencement of this Constitution

(a) all property and assets which immediately before such commencement were vested in His Majesty for the purposes of the Government of the Dominion of India and all property and assets which immediately before such commencement were vested in His Majesty for the purposes of the Government of each Governors Province shall vest respectively in the Union and the corresponding State, and

(b) all rights, liabilities and obligations of the Government of the Dominion of India and of the Government of each Governors Province, whether arising out of any contract or otherwise, shall be the rights, liabilities and obligations respectively of the Government of India and the Government of each corresponding State, subject to any adjustment made or to be made by reason of the creation before the commencement of this Constitution of



the Dominion of Pakistan or of the Provinces of West Bengal, West Punjab and East Punjab"

"300. Suits and proceedings

(1) The Governor of India may sue or be sued by the name of the Union and the Government of a State may sue or be sued by the name of the State and may, subject to any provisions which may be made by Act of Parliament or of the Legislature of such State enacted by virtue of powers conferred by this Constitution, sue or be sued in relation to their respective affairs in the like cases as the Dominion of India and the corresponding Provinces or the corresponding Indian States might have sued or been sued if this Constitution had not been enacted

(2) If at the commencement of this Constitution

(a) any legal proceedings are pending to which the Dominion of India is a party, the Union of India shall be deemed to be substituted for the Dominion in those proceedings; and

(b) any legal proceedings are pending to which a Province or an Indian State is a party, the corresponding State shall be deemed to be substituted for the Province or the Indian State in those proceedings CHAPTER IV RIGHT TO PROPERTY"

A reading of the above Articles, especially 294 (b) of the Constitution of India, would indicate that liability of the Central as well as State Government may arise out of any contractual liability or otherwise. The word "otherwise" would include various liabilities including tortious liabilities.

8. Article 300 states that the Government of India can sue or be sued subject to the act of Parliament or State legislature. Therefore, it is crystal clear that the respective State and Central Government could be sued under Article 300 for various liabilities including tortious liabilities.

9. The **State of Rajasthan Vs. Vidyavati & another** reported in **AIR 1962 SC 933** is a land mark judgment, post Independence, in which the Hon'ble Supreme Court held that the State is vicariously liable for negligence of the officials of the Government, while discharging non-sovereign functions. In that case, the State owned Jeep, which was driven by its driver in a rash and negligent manner, while taking the vehicle from the workshop to the residence of the Collector after repairs, for the official use of the Collector, hit a pedestrian, thereby causing fatal injuries. Though State claimed immunity on the ground of discharge of "sovereign functions", the



same was rejected by the Hon'ble Supreme Court holding that the State was vicariously liable for negligence of the driver as it was not a sovereign function and the accident occurred not during an official tour. The relevant paragraph of the said judgments is extracted as follows:

14. From the resume of the formation of the State of Rajasthan given above, it is clear that we need not travel beyond the stage when the Rajasthan Union was formed on the eve of the Constitution. It has not been shown that the Rajasthan Union would not have been liable for the tortious act of its employee, in the circumstances disclosed in the present case. The issue framed at the trial, on this part of the controversy, was Issue 9, in these terms:

"Whether the State of Rajasthan is not liable for the act of Defendant 1?"

The State of Rajasthan has not shown that the Rajasthan Union, its predecessor, was not liable by any rule of positive enactment or by common law. It is clear from what has been said above that the Dominion of India, or any constituent Province of the Dominion, would have been liable in view of the provisions aforesaid of the Government of India Act, 1858. We have not been shown any provision of law, statutory or otherwise, which would exonerate the Rajasthan Union from vicarious liability for the acts of its servant, analogous to the common law of England. It was impossible, by reason of the maxim "The King can do no wrong", to sue the Crown for the tortious act of its servant. But it was realised in the United Kingdom that that rule had become outmoded in the context of modern developments in state craft, and Parliament intervened by enacting the Crown Proceedings Act, 1947, which came into force on January 1, 1948. Hence the very citadel of the absolute rule of immunity of the sovereign has now been blown up. Section 2(1) of the Act provides that the Crown shall be subject to all those liabilities, in tort, to which it would be subject if it were a private person of full age and capacity, in respect of torts committed by its servants or agents, subject to the other provisions of the Act. As already pointed out, the law applicable to India in respect of torts committed by a servant of the Government was very much in advance of the common law, before the enactment of the Crown Proceedings Act, 1947, which has revolutionised the law in the United Kingdom, also. It has not been claimed before us that the common law of the United Kingdom before it was altered by the said Act with effect from 1948, applied to the Rajasthan Union in 1949, or even earlier. It must,



therefore, be held that the state of Rajasthan has failed to discharge the burden of establishing the case raised in Issue 9, set out above.

15. Viewing the case from the point of view of first principles, there should be no difficulty in holding that the State should be as much liable for tort in respect of a tortious act committed by its servant within the scope of his employment and functioning as such, as any other employer. The immunity of the Crown in the United Kingdom was based on the old feudalistic notions of justice, namely, that the King was incapable of doing a wrong, and, therefore, of authorising or instigating one, and that he could not be sued in his own courts. In India, ever since the time of East India Company, the sovereign has been held liable to be sued in tort or in contract, and the common law immunity never operated in India. Now that we have, by our Constitution, established a Republican form of Government, and one of the objectives is to establish a Socialistic State with its varied industrial and other activities, employing a large army of servants, there is no justification, in principle, or in public interest, that the State should not be held liable vicariously for the tortious act of its servant. This Court has deliberately departed from the common law rule that a civil servant cannot maintain a suit against the Crown. In the case of *State of Bihar v. Abdul Majid* [(1954) SCR 786] this Court has recognised the right of a government servant to sue the Government for recovery of arrears of salary. When the rule of immunity in favour of the Crown, based on common law in the United Kingdom, has disappeared from the land of its birth, there is no legal warrant for holding that it has any validity in this country, particularly after the Constitution. As the cause of action in this case arose after the coming into effect of the Constitution, in our opinion, it would be only recognising the old established rule, going back to more than 100 years at least, if we uphold the various liability of the State. Article 300 of the Constitution itself has saved the right of Parliament or the legislature of a State to enact such law as it may think fit and proper in this behalf. But so long as the legislature has not expressed its intention to the contrary, it must be held that the law is what it has been ever since the days of East India Company."

Therefore, the Apex Court held that the State should be liable for tortious act committed by its servants, within the scope of his employment, which is not connected with the discharge of sovereign



10. Though subsequently in the case of **Kasturi Lal Ralia Ram Vs. State of Uttarpradesh** reported in **AIR 1965 SC 1039** the Hon'ble Supreme Court distinguished the judgment of **Vidyavati's** case on facts confining it to tortious liability not arising from exercise of sovereign powers and upheld the defence of sovereign immunity and further held that the area of employment referable to sovereign powers must be strictly determined. However, in a subsequent judgment the Hon'ble Supreme Court in the case of **Nagendra Rao Vs. State of Andhra Pradesh** reported in **AIR 1994 SC 2663** held that the welfare state functions of States are multifaceted and it is not confined to only sovereign functions. The State's functions are spread over to regulate and control activities of the people in every sphere including educational, commercial, social, etc., and the Court held that distinction between sovereign and non sovereign powers has almost disappeared and the distinction between the sovereign and non-sovereign functions depends upon the nature of power and its exercises. Therefore, it is clear that the State is liable even for the acts for which the Government servants have not been authorized to do and if the same can be connected with the act so authorized, and for negligent, careless acts of the employees during the course of the employment.

11. Be that as it may, the defence of sovereign immunity has been completely given a go by, by the higher Courts and compensation is awarded to the citizens either under Article 32 or 226 for violation of fundamental rights, especially, Article 21 of the Constitution of India. In a number of cases, the respective Governments have been held to be liable for tortious acts committed by their employees in course of the employment for violation under Article 21. In the case of **Kathri Vs. State of Bihar** reported in **AIR 1981 SC 928**, the Hon'ble Supreme Court awarded compensation to the prisoners, who were blinded by the police by holding that even though police was discharging sovereign functions, the inhuman acts of the officials led to the violation of Fundamental Right conferred under Article 21 of the Constitution of India. Similarly in the case of **Rudal Shah Vs. State of Bihar** reported in **AIR 1983 SC 1086** the Hon'ble Supreme Court awarded Rs.35,000/- for the damages caused to the Prisoner in a Writ Petition filed under Article 32 as the convict was detained for a period of 14 years in jail, even after acquittal by Criminal Courts. A sum of Rs.50,000/- was awarded as compensation under Article 32 of Constitution of India in a Writ Petition filed under Article 32 before the Hon'ble Supreme Court, when an MLA from Rajasthan was illegally arrested and detained to prevent him from attending Assembly session in the case of **Bhim Singh Vs. State of Rajasthan** reported in **AIR 1986 SC 494**. In the case of **Saheli Vs. Commissioner of Police** reported in **AIR 1990 SC 513**, the Hon'ble Supreme Court awarded compensation for the death of



a 9 year old child by police assault and beating. In that case, a sum of Rs.75,000/- was awarded to the parents to be paid by the Delhi administration and to be recovered from the officers, who were responsible for the inhuman act.

WEB COPY

12. In the case of **Nilapati Behra Vs. State of Orissa**, reported in **AIR 1993 SC 1960**, the Hon'ble Supreme Court, while awarding compensation to the Petitioner therein, for the death of her son in police custody held that the principle of sovereign immunity does not apply to the public law remedies under Article 32 and Article 226 for the enforcement of the fundamental rights. The Hon'ble Apex Court on 14.09.2018 awarded compensation of Rs.50,00,000/- to former ISRO Scientist for "Mental Cruelty" suffered by him for falsely implicating and arresting him in "1994 Espionage case". This Court in W.A.No.3126 of 2019 awarded the compensation of Rs.65 lakhs to a victim who suffered spinal cord injuries due to fall of a electrical post, because of the negligence of corporation staff .

13. Now all the constitutional Courts in India are entertaining Writ Petitions filed under Articles 32 and 226 for violation of Fundamental Rights and awarding compensation under public law remedies.

14. Even though the Constitutional Courts are awarding compensation under public law remedies under Articles 32 and 226 by entertaining Writ Petitions for violation of Fundamental Rights of the citizens, Rule of law requires that the respective Governments should enact a law. Therefore, it is necessary to have a comprehensive legislation, regarding tortious liability of the State and its instrumentalities.

15. As rightly relied upon by Mr.R.Alagumani, learned counsel appearing on behalf of the Petitioner, the first Law Commission submitted its report I titled "Liability of the State in Tort" in the year 1956. Paragraphs 65 & 66 of the report are extracted as follows:

65. It would therefore not be advisable to adopt the legislation in this respect in England, America or Australia. It is necessary that the law should as far as possible be, made certain and definite instead of leaving it to courts to develop the law according to the view of the judges. The citizen must be in a position to know the law definitely.

The old distinction between sovereign and non-sovereign functions or governmental and non-governmental should no longer be invoked to determine the liability of the state.



66.The following shall be the principle on which legislation should proceed:

Under the general law:

Under the general law of torts, i.e., The English Common Law as imported into India on the principle of justice, equity and good conscience with statutory modifications of that law now in force in India.

(i) The State as employer should be liable for the torts committed by its employees and agents while acting within the scope of their office or employment.

(ii) The State as employer should be liable in respect of breach of those duties which a person owes to his employees or agents under the general law by reason of being their employer.

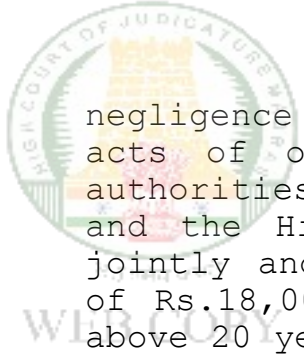
(iii) The State should be liable for the torts committed by an independent contractor only in cases referred to in Appendix IV.

(iv) The State also should be liable for torts where the corporation owned or controlled by the state to be liable.

(v) The State should be liable in respect of breach of duties attached under the general law, to the ownership, occupation, possession and control of immovable property from the moment the state occupied or takes possession or assumes control of the property."

The said recommendations made by the Law Commission in the year 1956 were accepted by the then Central Government and the Government has introduced two bills on the topic "The Government liability in Tort" in the Lok Sabha in the year 1965. Since the said bill had lapsed, again the bill was reintroduced in the year 1967 and certain modifications were suggested by the Joint Select Committee of Parliament headed by eminent jurist and law Minister Mr.A.K.Sen. Even the said bill got lapsed, due to premature dissolution of Lok Sabha in the year 1970, during Mrs.Indira Gandhi's regime. Thereafter, no effort has been taken by successive Central Governments to bring such an enactment.

16.Taking note of the aforesaid position, the Hon'ble Supreme Court in the case of **Municipal Corporation of Delhi, Delhi Vs. Uphaar Tragedy Victims Association and others** reported in **2011 (14) SCC 481**, while dealing with an Appeal filed against the judgment of the Hon'ble Delhi High Court, which dealt with a case regarding fire at Uphaar Cinema theatre in Green Park, South Delhi on 13.06.1977, resulting in death of 59 onlookers, leaving 103 injured wherein the victims filed Writ Petitions, accusing the theatre owners for their



negligence and for compensation from licensing authorities, alleging acts of omission and commission by the theatre owners, public authorities viz., Delhi Vidyut Board, Municipal Corporation of Delhi and the High Court held that they were liable for the incident jointly and severally and directed payment of uniform compensation of Rs.18,00,000/- to the legalheirs of the deceased who were aged above 20 years, Rs.15,00,000/- to the legalheirs of the deceased who were aged less than 20 years and Rs.1,00,000/- to the 103 injured persons along with 9% interest and the Hon'ble Supreme Court stressed the need for a comprehensive legislation dealing with tortious liability of the State and its instrumentalities and recommended the legislature for bringing up appropriate legislation to deal with the claims in public law for violation of fundamental rights at the hands of the State and its officials. While recommending, the Hon'ble Supreme Court also noted the recommendations of the first Law Commission and subsequent introduction of two bills on the Government liabilities in torts during 1965 - 1967 in the Lok Sabha. Paragraphs 109 to 112 are extracted as follows:

"109. Need for a comprehensive legislation dealing with tortious liability of the State and its instrumentalities has been highlighted by this Court and the academic world on various occasions and it is high time that we develop a sophisticated jurisprudence of public law liability. Due to lack of legislation, the courts dealing with the cases of tortious claims against the State and its officials are not following a uniform pattern while deciding those claims, and this at times leads to undesirable consequences and arbitrary fixation of compensation amount.

110. The Government of India on the recommendations of the First Law Commission introduced two Bills on the government liability in torts in the years 1965-1967 in the Lok Sabha but those Bills lapsed. In *Kasturi Lal case* [AIR 1965 SC 1039 : (1965) 2 Cri LJ 144] , this Court has highlighted the need for a comprehensive legislation which was reiterated by this Court in various subsequent decisions as well.

111 *. Public authorities are now made liable in damages in UK under the Human Rights Act, 1998. Section 6 of the Human Rights Act, 1998 makes a public authority liable for damages if it is found to have committed breach of human rights. The Court of Appeal in England in *Anufrijeva v. Southwark London Borough Council* [2004 QB 1124 : (2004) 2 WLR 603 : (2004) 1 All ER 833 (CA)] , attempted to answer certain important questions as to how damages should be awarded for breach of human rights and how should damages be assessed. Further, such claims are also dealt by

On behalf of the petitioner created by various statutes : they are

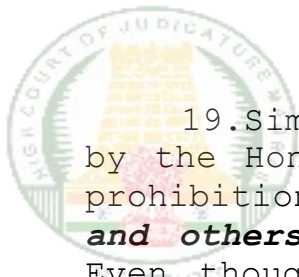


independent and impartial officials, who investigate complaints of the citizens in cases of maladministration. Experience shows that majority of the Ombudsmen's recommendations are complied with in practice, though they are not enforceable in courts. The European Court of Justice has developed a sophisticated jurisprudence concerning liability in damages regarding liability of public bodies for the loss caused by administrative acts.

112. We have highlighted all these facts only to indicate that rapid changes are taking place all over the world to uphold the rights of the citizens against the wrong committed by statutory authorities and local bodies. Despite the concern shown by this Court, it is unfortunate that no legislation has been enacted to deal with such situations. We hope and trust that utmost attention would be given by the legislature for bringing in appropriate legislation to deal with claims in public law for violation of fundamental rights guaranteed to the citizens, at the hands of the State and its officials."

17.The case in **Vadodara Municipal Corporation V. Purshottam v.Murjani and others** reported in **2014 (16) SCC 14** was an appeal filed against the judgment of the National Consumer Dispute Redressal Commission. In the said case also, the Hon'ble Supreme Court reiterated the need for parliamentary legislation dealing with the tortious liabilities of the State and its instrumentalities. In the said case, the matter was also referred to the Law Commission to look into the matter and take steps as may be necessary. In spite of that, nothing eventually happened.

18.As highlighted in the interim order passed by this Court dated 01.12.2020, the recommendations or observations made by higher Courts, either to make a comprehensive legislation on any subject or amendment suggested, neither the Parliament nor State legislature seriously take up those recommendations and consider and pass appropriate legislations or enactments as evident in the case of **P.Sudir Vs. bar Council of India** reported in **AIR 1999 SC 1167** in which the Hon'ble Supreme Court while quashing the resolution of the Bar Council to give training to the entrants into the legal profession for lack of rule making powers under the Advocates Act 1961, recommended to the Parliament to amend the Advocates Act by having provision for training the law graduates as the Court strongly felt that it is necessary to control the deterioration of the standards of legal profession. Even though the said judgment was given as early as during 1999, in spite of passing of two decades, nothing has been done till date to amend the Act.



19. Similar is the case with regard to the recommendations made by the Hon'ble Supreme Court for enactment of a statute regarding prohibition of sexual harassment to Women at work place in **Vishaka and others vs. State of Rajasthan** reported in **AIR 1997 SC 3011**. Even though the said judgment was passed in 1997, the Act viz., "Sexual harassment to women at work place (prevention, prohibition and redressal) Act, 2018," was passed only after 1 ½ decades.

20. This Court would like to refer the judgment of the Hon'ble Supreme Court in **Gainda Ram and others Vs. MCD and others** dated 08.10.2020 reported in **2010 (10) SCC 715**. While dealing with the petitions regarding the right of the hawkers on the streets of Delhi, taking into consideration the pending bill viz., Model Street Vendors (Protection of livelihood and regulation of street vending) bill 2009 introduced by the Ministry of Housing and Urban Poverty Alleviation, Government of India, which had been introduced to regulate the fundamental right of street hawking and street vending by law and for providing social security and livelihood rights for street vendors, the Supreme Court issued a direction to enact a law on the basis of bill viz., Model Street Vendors (Protection of Livelihood and Regulation of Street Vending) Bill, 2009 before 30th June 2011. Paragraphs 63, 75, 77 and 78 of the said order are usefully extracted as follows:

"63. There is a Bill called a Model Street Vendors (Protection of Livelihood and Regulation of Street Vending) Bill, 2009 by the Government of India, Ministry of Housing and Urban Poverty Alleviation. From the preamble and the long title of the Bill it appears that the Bill is to provide for protection of livelihood of urban street vendors and to regulate street vending and for matters connected therewith. Now if the said Bill is enacted in the present form, the Bill then prima facie recognizes the rights of hawkers and vendors under Article 21 of the Constitution since it seeks to protect their livelihood.

...

75. In view of such schemes, the hawkers, squatters and vendors must abide by the Dispute Redressal scheme mentioned above.. There should not be any-direct approach to this Court by way of fresh petition or IAs, bypassing the Dispute Redressal Mechanism provided in the scheme.

...

77. This Court is giving this direction in exercise of its jurisdiction to protect the fundamental right of the citizens. The hawkers' and squatters' or vendors' right to carry on hawking has been recognized as fundamental right under Article 19(1)(g). At the same time the right of the



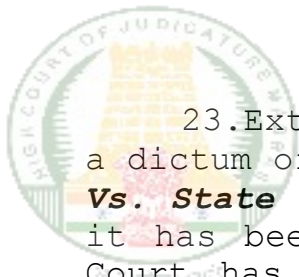
commuters to move freely and use the roads without any impediment is also a fundamental right under Article 19(1) (d). These two apparently conflicting rights must be harmonized and regulated by subjecting them to reasonable restrictions only under a law. The question is, therefore, vitally important to a very large section of people, mostly ordinary men and women. Such an issue cannot be left to be decided by schemes and which are monitored by this Court from time to time.

78. The second reason is that the appropriate Government has already enacted a Bill and, therefore, the initial decision making in the field of legislative exercise is complete. It has, of course, to be converted into a law by following the Constitutional process. That is why time till 30th June, 2011 is given."

Though the said direction was given by the Hon'ble Supreme Court to pass the bill called Street Vendors (Protection of livelihood and regulation of street vending) bill, 2009, the draft bill was circulated between all States and Union Territory for creation of State legislation. A central legislation was introduced following the directions of the Hon'ble Supreme Court during 2010 and the bill was approved by Cabinet on 17.08.2012 and it was introduced in Lok Sabha on 06.09.2012 and passed on 06.09.2013 and by Rajya Sabha on 19.02.2014; the bill received assent of the President on 04.03.2014 and came into force on 01.05.2014

21. The Act enacted was Street Vendors (Protection of livelihood and regulation of street vending) Act 2014. The above judgment is relied upon only to show that a direction has been given to enact a law by the Hon'ble Supreme Court in 2010.

22. These are all only examples of many suggestions made by the constitutional Courts, recommending the enactment of comprehensive legislations or suggesting amendment to Acts or Rules and as to how Parliament has not acted upon them consistently. If that is the position, this Court is of the opinion that restraint shown by the Courts, in exceeding its jurisdiction to encroach upon field of legislature should be given up. In the public interest only, Courts are making recommendations and giving suggestions for amendment. If it is not taken note of and acted upon for decades together seriously by legislature or Parliament necessarily, this Court has to necessarily rise up to the occasion and give appropriate directions in policy making and enactment of laws. It is the constitutional responsibility of this Court to safeguard public interest. It may be criticized as "judicial adventurism" or "judicial activism". But it is a necessary duty.



23.Extraordinary circumstances require extraordinary relief is a dictum of the Hon'ble Supreme Court as declared in **Prithipal Singh Vs. State of Punjab** reported in **2012 (1) SCC 10**. In the said case, it has been held that while dealing with unprecedented cases, the Court has to be innovate the law and may pass an unconventional order, keeping in mind that an extraordinary fact situation requires extraordinary measures. Paragraph 50 of the judgment is usefully extracted as follow:

"50. Extraordinary situations demand extraordinary remedies. While dealing with an unprecedented case, the Court has to innovate the law and may also pass an unconventional order keeping in mind that an extraordinary fact situation requires extraordinary measures. In B.P. Achala Anand v. S. Appi Reddy [(2005) 3 SCC 313 : AIR 2005 SC 986] this Court observed: (SCC p. 318, para 1)

"1. Unusual fact situation posing issues for resolution is an opportunity for innovation. Law, as administered by courts, transforms into justice."

Thus, it is evident that while deciding the case, the court has to bear in mind the peculiar facts, if so exist, in a given case."

24.In this case, as highlighted by the Petitioner and as proved by **Sudir's** as well as **Vishaka's** case, the Parliament and the State Governments are not responsible enough to act as per the suggestions. They are either not considering the suggestions seriously or keeping the suggestions in cold storage which either way will not help the people to overcome the extraordinary situation. Therefore, necessarily this Court has to exceed, and over reach the jurisdiction and cross the boundaries to give directions to legislature to enact a law.

25.As rightly pointed out by Mr.R.Alagumani, learned counsel appearing on behalf of the petitioner, the recommendations were made by the first Law Commission as early as in 1956. The bill viz., Government liability in tort was introduced in 1965, reintroduced in 1969, got lapsed and thereafter, the said issue was forgotten for years together. The Hon'ble Supreme Court on 13.10.2011 in the case of **Municipal Corporation of Delhi, Delhi Vs. Uphaar Tragedy Victims Association and others** reported in **2011 (14) SCC 481** and during 2014, in the case of **Vadodara Municipal Corporation V. Purshottam v. Murjani and others** reported in **2014 (16) SCC 14** also reiterated and recommended to the Parliament to enact a comprehensive legislation. The above dates and events would indicate the then Government acted introducing the bill in 1965 & 1967. For more than



half a century, the issue is successfully kept in cold storage by the policy makers.

26.The constitution framers would not have thought that the policy makers would be very insensitive and ignore the suggestions and recommendations made by Constitutional Courts. As expected, all the three wings of the State are expected to act conjointly, in consonance, without any conflict by getting suggestions, from each other and act accordingly in the interest and welfare of the people and the society at large, whereas as explained above, the expectation of the constitution framers have been belied by inaction and insensitivity exhibited by the policy makers in not properly acting upon the suggestions and recommendations of the judiciary.

27.It is not only in this case, but also in many cases, the necessary recommendations made by the judiciary have been ignored for the reasons best known to the policy makers. Either the recommendations of the judiciary are not brought to the policy makers' knowledge at the right time or there is lack of mechanism on the part of the Government to take note of it or lack of enthusiasm on the part of the policy makers, inspite of their knowledge. This kind of situation is very dangerous to the democracy. The conventional theory that the judiciary has to only interpret the law has to be necessarily exceeded, if the policy makers exhibit inaction in a particular case.

28.It is not as if, this Court is unaware that the Courts cannot give directions or issue mandamus to make a legislation. In the following judgment the Hon'ble Supreme Court held that the Courts can neither legislate nor issue a direction to the legislature to enact in a particular manner.

(a)2015 (3) LW 435, R.Mallika & others V. A.Babu

(b)1993 Supp (3) SCC 9, V.K.Sood V. Dept. Of Civil Aviation

(c) (1971) 2 SCC 747, Narinder Chand Hem Raj v. UT, H.P.

(d) (1985) 3 SCC 169, State of H.P. V. Parent of student of Medical College

(e)1989 Supp (2) SCC 364, Asif Hameed V. State of J & K.

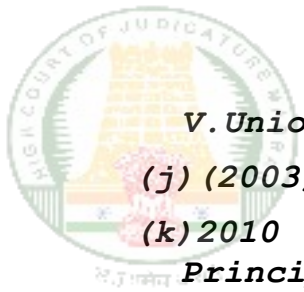
(f) (1999) 6 SCC 82, Ajaib Singh V. Sirhind Coop. Marketing-cum-Processing Service Society Ltd.

(g) (2002) 5 SCC 294, Union of India V. Assn. For Democratic Reforms

(h) (2001) 7 SCC 358, District Mining Officer V.TISCO

(i) (1989) 4 SCC 187, Supreme Court Employees' Welfare Assn.,

<https://hcservices.ecourts.gov.in/hcservices/>



V.Union of India

(j) (2003) 6 SCC 195, Union of India V. Prakash P.Singh P.Hinduja

(k) 2010 (1) SCC 353, University of Kerala V. Council of Principals of Colleges

(l) (2007) 6 SCC 586, State of U.P. V. Jeet S.Bisht

(m) (2012) 2 SCC 542, V.K.Naswa V. Home Secretary, Union of India and others.

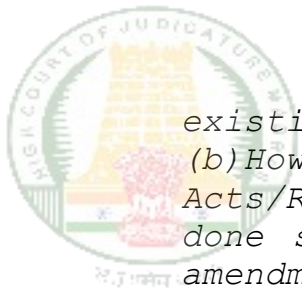
In the above judgments, the Hon'ble Supreme Court elaborately dealt with about the separation of powers and the incompetency of the judiciary to give a direction to enact a law or to legislate a law under Articles 32 or 226. The above judgments would only show the restraint shown by the judiciary in not exceeding its powers and recognising its boundaries.

29.Neither the legislature acted fast in the past in accepting the recommendations of Courts nor they would do so in the present time or in future. In view of that, left with no other go, this Court is compelled to give a direction, which is not to direct the Parliament to legislate a comprehensive act in the field of tortious liability of the State or its employees, but a direction to take necessary action, including policy decision, which would result in enactment of a legislation covering the field "Tortious liability of the State" as recommended by the first Law Commission and as reiterated by the Hon'ble Supreme Court on various occasions.

30.In other countries also, especially, USA and UK there is a comprehensive legislation. The UK enacted statute called the "Crown Proceedings Act, 1947" which enables the citizens to approach the Court to enforce tortious liability against the crown. Similarly, USA has enacted statute called "Federal Torts Claims Act 1946" wherein, the U.S. Government is not liable for any tort committed in discharge of statutory duty as long as the duty was performed by its official with due care. India is a common wealth country, mostly following the British laws/Acts and there should not be any problem in following it by having a comprehensive Act covering the field of tortious liability of the State as in England and United States of America to bring a comprehensive legislation.

31.It seems that the successive central Governments have not changed their attitude regarding implementation of the recommendations or suggestions made by the Courts. This Court, by the interim order raised about 7 queries. The queries 'a' and 'b' are extracted as follows:

"(a) In how many judgments, the Constitutional Courts have recommended for enactment of new laws or amendments of the



existing Acts, so far?

(b)How many orders have been acted upon and suitable Acts/Rules and amendments to the existing Acts, have been done so far and what are all the new Acts/Rules and the amendments made so far?"

The answer given is that no such information is maintained and is available with respondents 1 to 3. The aforesaid response would fortify the perception of this Court that the Central Government is not keeping track of the judgments, especially, the recommendations and suggestions given by Constitutional Courts for the past 70 years. After enactment of constitution, the Government should be conscious and sensitive to the suggestions made by the constitutional Courts. Atleast hereafter, this Court expects the Central Government through their departments would note and bring it to the policy makers' knowledge about the suggestions and recommendations made by the constitutional Courts for enactment of law or for amendments.

Query 'c' reads as follows:

"(c)How many judgments are being acted upon and suitable Acts/Amendments are in the process of enactment?"

Even for that also It has been stated that no such information is available. Only 21st Law Commission referred various judgments of High Courts and Supreme Court and to file report 263 to 267, 272, 275, 276 & 277. Even it has not been mentioned as to whether the Law Commission's report based on the recommendations and judgments of the Hon'ble Supreme Court and various High Courts has been acted upon or not. The answer given is very vague and the attitude of respondents 1 to 3 needs to be deprecated for not giving proper answers to the query raised by this Court.

Query No.d reads as follows:

"(d)When will the Parliament will bring a comprehensive suitable legislation in the field of 'Torts and State Liability' for violation of fundamental rights of the citizens at the hands of the State and its officials?"

The answer given is that there is no proposal to bring a comprehensive legislation in the field of torts and State liabilities for violation of fundamental rights of the citizens at the hands of the States and its officials. It is not understandable as to how the Government inspite of first Law Commission's report and subsequent suggestions made by the Hon'ble Supreme Court, could still say that there is no proposal for such legislation. It will go to show that the Government has ignored the recommendations of the Law Commission as well as Hon'ble Supreme Court and kept it in cold storage and the same needs to be deprecated.

Query Nos, 'e' & 'f' reads as follows:

"(e)Whether the Central and State Governments are having appropriate Wings to note down the judgments/orders of the Constitutional Courts, wherein suggestions for enacting



new Acts or amendments have been enacted/proposed or recommended?

(f) If there is no such Wing, when such Wing will be established to bring those suggestions to the higher-ups or policy makers to act upon suggestions given by Courts?"

The answer given for queries "e" & "f" would establish that there is no mechanism available in each department or the department of legal affairs to note down the suggestions and recommendations given by the constitutional Courts for enactment of legislation or amendment of legislation or Rules and therefore, there is a necessity for this Court to issue direction to the Central Government to appoint a Nodal Officer in each department, who is qualified and well versed in law to go through the judgments of the constitutional Courts and note down the recommendations/suggestions given with regard to each department and bring it to the policy makers' knowledge by way of report regularly, so that it would be transmitted to the department of legal affairs for comprehensive examination of the subject. The said Nodal Officer could prepare suggestions and directions made by the constitutional Courts and file a report to the Head of the Department and the Head of the Department shall consider and give an opinion and transmit to the Department of legal affairs for a comprehensive examination of those subjects regularly within a period of three months and take a decision within a period of six months thereof, with regard to the action proposed.

32. With regard to the prayer sought for by the Petitioner in W.M.P. (MD).No.13603 of 2020 is concerned viz., seeking direction to the respondents, to propose a comprehensive legislation in the field of 'Torts and State Liability' as per the directions of Hon'ble Supreme Court of India in "**MCD vs. Uphaar Tragedy Victims Assn (2011) 14 SCC 481**" and "**Vadodara Municipal Corporation V. Purshotam v. Murjani and others (2014) 16 SCC 14**" in accordance with law within the time stipulated by this Court, the respondents merely stated the matter of appointment of the Hon'ble Chairman and members is under the consideration of the Government and the requisite action is under process.

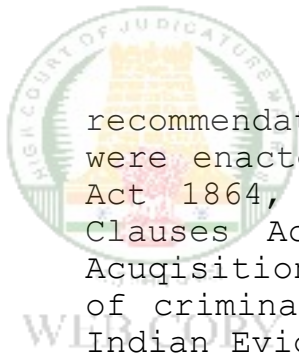
33. Law Commission is a non statutory body, which has been established by the Government for a fixed tenure. It is an advisory body to the Law Ministry. Law Commission's functions : The main function of the Law Commission is to do legal research and review the existing law to bring reforms including suggestion of amendments, recommendations to repeal obsolete laws, identifying statutes which requires changes and to make recommendation with regard to the changes to be brought, recommendations regarding enactment of new laws which are needed in the present social scenario to achieve the goals of constitution, to give opinion



regarding matters which are connected with law and judicial administration which could be referred to it by the Law Ministry. Though Law Commissions were being appointed regularly and their recommendations are being submitted to the Government, some of the recommendations have been acted upon and transferred into action, whereas many more recommendations have not been acted upon. For example, the first Law Commission which was formed in 1955, with its Chairman being the then Attorney General of India M.C.Setal Vad, in 1956 gave a report No.1 titled "Liability of the State in torts" to enact the comprehensive legislation. Though the bill was introduced in 1965 and reintroduced in 1967, it got lapsed in 1970 due to resolution of Parliament, thereafter nothing has been done. This itself is a tip of the iceberg as to how the Law Commission's recommendations are being ignored.

34. When an advisory body established by an executive order for the purpose of making recommendations after analyzing the issues thoroughly, inviting inputs from various stakeholders, including public and after discussing and analyzing all the inputs make a recommendation regarding a particular issue, it is the bounden duty of the Government either to act upon the recommendation or to take a decision to accept or to reject. It is very unfortunate that most of the recommendations are not acted upon. If such is the attitude of the Government, it would make one to think that there is no necessity for any Law Commission. Probably with that idea only, it seems the Central Government has not appointed any Chairman and Members. Eventhough the Law Commission was notified through notification dated 22.01.2020 and the 21st Law Commission's tenure got over in August 2018, it seems that for two years, there was no Law Commission. Even after constitution of Law Commission in 2020, so far, neither Chairman nor members have been appointed.

35. If one peeps into the past, the history would tell that for the first time, Law Commission was formed in 1834 by the British Government by chartered Act in 1833. The first Chairman of Law Commission was Lord Macaulay. Indian penal Code was suggested by the first Law Commission on 02.05.1837 and Code of Civil Procedure and Law of Limitation was recommended by the pre-Independence Law Commission formed in 1853 and Code of Criminal Procedure in 1861. For succession and inheritance for Indians other than Hindus and Muslims was recommended in 1865, draft contract law 1866, draft negotiable instruments law 1867, draft evidence law in 1868, revision of Code of Criminal Procedure 1870, draft transfer of property law 1870 and draft code of insurance 1871. The 4th pre-Independence Law Commission recommended Code of Negotiable Instruments in 1881, Code on Trust Law 1882, Code on transfer of property and easement 1882 and revised code of criminal procedure 1882 and revised code of civil procedure 1882. Based on the



recommendations, the pre-independence Law Commissions, many acts were enacted viz., Religious Endowments Act 1863, Official Trustees Act 1864, Carriers Act 1865, Indian Companies Act 1866, General Clauses Act 1868, Divorce Act 1869, Court fees Act 1870, Land Acquisition Act 1870, Female infanticide prevention Act 1870, code of criminal procedure revised 1872. Indian Contract Act 1872, New Indian Evidence Act 1872, Special Marriages Act 1872, etc.,

36. After Independence the first Law Commission was established in 1955 and made about 14 recommendations and the last Law Commission was 21st Law Commission which recommended many amendments and especially recommendation regarding wrongful prosecution (miscarriage of justice: Legal remedies), Human DNA profiling, Hate speech. Electoral reforms and setting up of Regional Supreme Court Benches have been suggested by 11th Law Commission in his 125th report in the year 1988 to address the grievance of litigants hailing from southern States and North Eastern States. The commission's task is to work upon the assigned agenda and mainly comes up with research based reports and recommendations. Based on the report submitted by the Law Commission, the Ministry of Law and Justice forwards the report with its remarks to other concerned Ministries in the Government and seek their opinion regarding the recommendation and thereafter, take a decision as to whether the recommendation has to be implemented or not. Once the proposals are cleared by various ministries and approved by the cabinet, the bill is being drafted by Ministry of law and justice and presented before the Parliament for approval. Though the recommendations of the Commission are not binding on the Government, at least a decision has to be taken as to whether it has been accepted or not. Most of the recommendations are kept in cold storage.

37. As already stated, the recommendations of the Law Commission are not binding upon the Government. It is stated that approximately 45% of the recommendations made by the Commission so far have been acted upon or made into laws, whereas 70% of the recommendations of Law Commission in UK are stated to have been implemented by the Parliament. Many significant reforms have been made in the judicial system, especially, introduction of Fast Track Courts, introduction of NOTA by way of electoral reforms. Since there is no statutory backing, Law Commission is only under Ministry of Law and Justice.

38. Taking into consideration the excellent works done by the Law Commissions by way of revolutionary recommendations, it is appropriate for the Government to make it a statutory body or a constitutional body, like National Commission for Scheduled Caste and Scheduled Tribes and Backward Classes so that the recommendations made by the Commission are binding upon the Government. To do research work, sufficient funds have to be



allocated for functioning of the Law Commission.

39. In view of the above, this Court directs the Government to consider the suggestions made by this Court to provide either statutory status, after enacting Central Act or give constitutional status like Commission for SC/ST, backward classes by amending the constitution. The whole exercise done by the Law Commission with research and also consulting various stakeholders and making recommendations would become futile, if the recommendations are not acted upon.

40. When such is the importance of the Law Commissions for reformation in the legal and judicial system which is an evolving process, this Court directs to appoint the Chairman and other members for which a notification has already been published on 22.01.2020, within a period of three months from the date of receipt of a copy of this order.

41. In the result, this Court issues the following directions:

(1) This Court directs the Government to consider introducing a bill, similar to which has been introduced in the year 1965 viz., "Liability in Tort" bill introduced in 1965 and re-introduced 1967 and got lapsed due to dissolution of Parliament during 1970, taking into account the present scenario, within a period of six months.

(2) There shall be a direction to the Central Government to take a decision with regard to the suggestion for making Law Commission either as a statutory body or constitutional body within a period of six months.

(3) The Central Government shall allot more funds to the Law Commission for research and more infrastructures to Law Commission of India at the earliest.

(4) The Respondents shall appoint the Chairman and Members of Law Commission of India within three months from the date of receipt of a copy of this order, failing which Respondents 1 & 3 shall appear before this Court.

(5) The Respondents shall appoint a "Nodal Officer", who is well qualified in law, in each department, to note down the Courts' recommendations to bring to the knowledge of the Policy-Makers of each department by way of periodical reports within a period of six months from the date of receipt of copy of this order, so that policy decision would be taken.

42. With the above directions, this Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.



43.Call the matter, for compliance of the 4th direction or for appearance of the Respondents, after three months and for compliance report regarding directions 1, 2, 3 and 5 or for appearance of Respondents, after six months.

WEB COPY

Sd/-

Assistant Registrar (AD.II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

sai

To

1.The Principal Secretary,
Ministry of Law and Justice,
Union of India, 4th Floor, A-Wing,
Shastri Bhawan, New Delhi 110001.

2.The Member Secretary,
Law Commission of India,
2nd and 4th Floor, B Wing,
Lok Nayak Bhawan, Khan Market, New Delhi 110003

3.The Secretary,
Implementation Cell, Department of Legal Affairs,
Ministry of Law and Justice,
A Wing, 4th Floor, Shastri Bhawan, New Delhi 110001

4.Union of India,
Represented by its Secretary,
Ministry of Parliamentary Affairs, New Delhi.

5.The State of Tamil Nadu,
Represented by its Chief Secretary,
Secretariat, Chennai.

6.The Secretary to Government,
Government of Tamil Nadu,
Law Department,
Secretariat, Chennai.

+1 CC to M/s.GP (SR-26788[F] dated 19/08/2021)

W.P. (MD) .No.16274 of 2020

Dated:17.08.2021

RD(13.09.2021) 30P 8C

<https://hcservices.ecourts.gov.in/hcservices/>